

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Mediacom Southeast LLC	)	
	)	CSR 5994-E
Petition for Reconsideration of Order Granting	)	
Mediacom Southeast Petition for Determination of	)	
Effective Competition in Unincorporated Santa	)	
Rosa County, Florida (FL0728, FL0519)	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 19, 2007**

**Released: July 20, 2007**

By the Deputy Chief, Media Bureau:

**I. INTRODUCTION**

1. The County of Santa Rosa, Florida (“Santa Rosa”) has filed pursuant to Section 1.106 of the Commission’s rules a petition for reconsideration of the Commission’s grant of Mediacom Southeast LLC’s (“Mediacom”) petition for determination of effective competition in that franchise area.<sup>1</sup> The Bureau granted Mediacom’s petition based on its conclusion that Santa Rosa was subject to effective competition, as that term is defined in Section 76.905(b)(2) of Commission rules.<sup>2</sup> Santa Rosa urges reconsideration because of the grant’s significant public interest consequences and because of new facts unknown to Santa Rosa until after its last opportunity to comment.<sup>3</sup> As discussed below, we deny Santa Rosa’s petition for reconsideration.

**II. BACKGROUND**

2. In its *Initial Order*, the Bureau found that Mediacom had successfully met its burden of proof to show that effective competition exists in unincorporated Santa Rosa County, Florida.<sup>4</sup> Mediacom had to overcome a presumption that its cable system in Santa Rosa was not subject to effective competition.<sup>5</sup> Mediacom had the burden of rebutting the presumption that effective competition did not exist with evidence that effective competition was present within the relevant franchise area.<sup>6</sup> Mediacom met this burden with evidence showing that that effective competition existed under the “competing provider” test.<sup>7</sup> The “competing provider” test stems from Section 623(l)(1)(B) of the Communications Act, which provides that a cable operator is subject to effective competition if the franchise area is (a)

<sup>1</sup> 47 C.F.R. § 1.106.

<sup>2</sup> 47 C.F.R. § 76.905(b)(2); *see* 47 U.S.C. § 543(l)(1)(b).

<sup>3</sup> Petition for Reconsideration at 2-3; *see also* 47 C.F.R. § 1.106(c)(2).

<sup>4</sup> *See In the Matter of Mediacom Southeast LLC, Petition for Determination of Effective Competition in Unincorporated Santa Rosa County, Florida*, 18 FCC Rcd 7718, 7720-21 (2003) (“*Initial Order*”).

<sup>5</sup> 47 C.F.R. § 76.906.

<sup>6</sup> *See* 47 C.F.R. §§ 76.906 & 76.907.

<sup>7</sup> *Initial Order*, 18 FCC Rcd at 7718.

served by at least two unaffiliated multi-channel video programming distributors (“MVPD”), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.<sup>8</sup>

3. The *Initial Order* determined that the first prong of the competing provider test was satisfied due to the competitive presence of two unaffiliated direct broadcast satellite (“DBS”) providers, namely DIRECTV, Inc. and EchoStar Communications Corporation, each of which provide comparable video programming to at least 50 percent of the households in Santa Rosa.<sup>9</sup> The *Initial Order* also found that the second prong of the competing provider test was satisfied because the number of households subscribing to program services offered by MVPDs, other than the largest MVPD, exceeded 15 percent of the households in the franchise area.<sup>10</sup> The Bureau determined that Mediacom was the largest MVPD in Santa Rosa and that the aggregate penetration of the two DBS providers was 29.7 percent, well above the 15 percent threshold.<sup>11</sup>

### III. DISCUSSION

4. Santa Rosa’s petition for reconsideration disputes our initial finding that effective competition exists in Santa Rosa under the competing provider test. Santa Rosa contends that it can show that the DBS penetration rate falls below the 15 percent threshold required by the competing provider test.<sup>12</sup>

#### A. Whether Consideration of Santa Rosa’s New Facts Best Serves the Public Interest

5. The Commission may consider a petition for reconsideration based on facts not previously presented under limited circumstances.<sup>13</sup> One such circumstance is if consideration of such facts not previously presented to the Commission is required in the public interest.<sup>14</sup> Santa Rosa states that reconsideration is warranted under this exception.<sup>15</sup> First, Santa Rosa states that it will provide evidence that shows that Mediacom did not provide sufficient proof that its franchise area was subject to effective competition.<sup>16</sup> Second, Santa Rosa contends that review is necessary to prevent Mediacom from further increasing its cable rates, which Mediacom allegedly did after we granted the *Initial Order*.<sup>17</sup> Third, Santa Rosa alleges that our reliance on SkyTrends data on DBS subscribership, submitted by Mediacom in support of its original petition, amounts to improper delegation of authority to a private company.<sup>18</sup>

<sup>8</sup> 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>9</sup> *Initial Order*, 18 FCC Rcd at 7719-20.

<sup>10</sup> *Id.* At 7721.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> 47 C.F.R. § 1.106(c).

<sup>14</sup> 47 C.F.R. § 1.106(c)(2). Santa Rosa also argues that Section 1.106(b)(2)(ii) justifies consideration of its new evidence. 47 C.F.R. § 1.106(b)(2)(ii). Because we find that reconsideration is warranted under Section 1.106(c)(2), we need not consider Santa Rosa’s arguments under this provision.

<sup>15</sup> Petition for Reconsideration at 2-3.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> *Id.* at 5-6.

<sup>18</sup> *Id.*

6. We find that consideration of Santa Rosa's new evidence and arguments is warranted under the public interest standard.<sup>19</sup> If, as Santa Rosa suggests, its new evidence shows that our *Initial Order* was flawed, it is in the public interest to review this new information. However, we reject Santa Rosa's contention that our use of SkyTrends data constitutes an improper delegation of authority. As we have noted previously, data providers such as SkyTrends and Satellite Broadcasting and Communications Association ("SBCA") do not decide the merits of a cable operator's petition; the Commission retains the authority to determine effective competition based on the complete record amassed in a proceeding.<sup>20</sup>

**B. Whether Santa Rosa's New Evidence Shows that Effective Competition Does Not Exist Under the Competing Provider Test**

7. Santa Rosa's arguments on reconsideration focus solely on the second prong of the competing provider effective competition test. Santa Rosa states that the penetration rate of MVPDs, other than the largest MVPD, actually falls below the 15 percent threshold.<sup>21</sup> It calculates that figure by treating the number of Santa Rosa zip code+4 extension areas determined by SkyTrends to have at least one DBS subscriber as equivalent to only one subscriber.<sup>22</sup> It then divides that number, 99, by the same number of franchise area households that Mediacom used in its calculations in its initial petition. Using these figures, Santa Rosa calculates a DBS penetration rate of between 12 and 15 percent, rather than the 29.7 percent figure calculated in the *Initial Order*.<sup>23</sup> In addition, Santa Rosa argues that several alleged flaws in SkyTrends' calculation method lower the DBS penetration rate even further.<sup>24</sup> Santa Rosa contends that the 99 zip code+4 extension areas represent either commercial establishments or subscribers in incorporated areas outside the franchise area of Santa Rosa.<sup>25</sup> Thus, Santa Rosa argues, those zip code+4 extension areas should not have been included to calculate the DBS penetration data.<sup>26</sup>

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<sup>19</sup> See 47 C.F.R. § 1.106(c)(2).

<sup>20</sup> See, e.g., *In the Matter of Coxcom, Inc. D/B/A Cox Communications Orange County, CA, Petition for Determination of Effective Competition*, 2007 WL 685483 at 3 ¶ 12 (Mar. 7, 2007); *In the Matter of Comcast Cable Communications, LLC, Petition for Determination of Effective Competition in 42 California Franchise Areas*, 2007 WL 174489 at 3 ¶ 13 (Jan. 22, 2007); *In re Mediacom Minnesota LLC, Petition for Determination of Effective Competition in Sixteen Minnesota Communities*, 20 FCC Rcd 4984, 4988 ¶13 (2005) (confirming the methodology of a SkyTrends subscriber count report that included dual cable/DBS subscribers because the Commission concluded that the rationale for doing so stems from statutory language); *In re Fibervision, Inc.*, 17 FCC Rcd 16313, 16315 ¶5 (2002) (agreeing that an adjustment of SkyTrends data was appropriate in order to more "accurately quantify subscribers using the best available DBS subscriber data").

<sup>21</sup> See Petition for Reconsideration at 14-15.

<sup>22</sup> See *id.* at 10, 14-15; see also Reply to Opposition at 12-13. Santa Rosa does not explain its reasoning for making its calculation using the total number of zip code+4 extension areas, rather than the total number of DBS subscribers located in these zip code+4 extension areas.

<sup>23</sup> Petition for Reconsideration at 1, 3.

<sup>24</sup> Petition for Reconsideration at 11-16. Santa Rosa argues that it is implausible that 6,052 zip code+4 extension areas exist in unincorporated Santa Rosa and that Mediacom double-counted individual subscribers with two receivers, failed to adjust numbers to eliminate commercial subscribers and to include an error rate, and failed to eliminate dual and seasonal subscribers. *Id.* We note that several of these arguments were addressed by the Bureau in the *Initial Order*. See *Initial Order*, 18 FCC Rcd at 7721.

<sup>25</sup> Petition for Reconsideration at 13. Santa Rosa claims to have discovered that 99 zip code+4 extension areas represent commercial accounts or areas outside of Santa Rosa by typing in the zip code+4 extension areas Mediacom used in its making its own calculations using Mapquest.com. *Id.* We make no finding as to the accuracy of Santa Rosa's use of this Internet search tool.

<sup>26</sup> *Id.* at 13.

8. In Opposition, Mediacom counters many of Santa Rosa's criticisms, stating that the Bureau has repeatedly considered and consistently accepted the SkyTrends process for determining the number of DBS subscribers.<sup>27</sup> Furthermore, Mediacom explains that Santa Rosa incorrectly equates zip code+4 extension areas with individual subscribers.<sup>28</sup> With respect to the 99 zip code records that allegedly should have been excluded, Mediacom states that these extension areas were identified by SkyTrends using its approved methodology.<sup>29</sup>

9. We deny Santa Rosa's petition for reconsideration. As we have noted in previous cases, a single zip code+4 extension area frequently contains multiple DBS subscribers.<sup>30</sup> By treating each zip code+4 extension area as equal to one subscriber, Santa Rosa essentially undermines the statutory test for competing provider effective competition by generating skewed calculations that bear no reflection on the state of MVPD competition in Santa Rosa. Santa Rosa argues that we should exclude the 99 zip code+4 extension areas discussed above from the original 6,052 submitted by Mediacom. It contends that the remaining 5,953 zip code+4 extension areas represent the correct number of DBS subscribers located in Santa Rosa.<sup>31</sup> Santa Rosa attempts to show that adjustments based on alleged additional errors in SkyTrends' methodology further reduces the penetration rate below the 15 percent threshold.<sup>32</sup> In actuality, however, Santa Rosa's underlying assumption to its calculations – that 5,953 zip code+4 extension areas equates to 5,953 subscribers – is wrong. The 5,953 zip code+4 extension areas represent more than 11,255 DBS subscribers.<sup>33</sup> Calculations based on correct subscriber numbers show a penetration rate of over 29 percent.<sup>34</sup> Even assuming (which we do not) that all of Santa Rosa's data critiques are valid, the DBS penetration rate is still far in excess of 15 percent.<sup>35</sup> We find that Santa Rosa

<sup>27</sup> Opposition at 5-9. Mediacom reiterates that unincorporated Santa Rosa County contains 6,052 zip code+4 extension areas, that SkyTrends' zip code+4 methodology does not double count subscribers with multiple receivers and that its calculations reflect adjustments for seasonal subscribers. *Id.*

<sup>28</sup> *Id.* at 8. Mediacom asserts that "[t]he County assumes only 6,052 subscribers as the starting point, instead of the 11,000-plus [DBS] subscribers reported by SkyTrends. The County, having erroneously concluded that there were 6,052 zip [code]+4 records from which the final SkyTrends subscriber totals for Santa Rosa were drawn, premised its calculations on its incorrect assumption that each [zip code+4 exchange area] represents one subscriber." *Id.*

<sup>29</sup> *Id.* at 8. Mediacom states that "[t]o the extent the County employed mapping software that has never been accepted by the Commission instead of using the longitude and latitude of each Zip+4's centroid, there is no basis for comparison. The fact remains that the County's approach to discrediting the SkyTrends process fails in that its wholly speculative theories do not stick." *Id.*

<sup>30</sup> *Id.* at 5, citing *In the Matter of Marcus Cable Associates, LLC D/B/A Charter Communications, Petition for Reconsideration of the Determination of Effective Competition in Denton, Texas*, 18 FCC Rcd 9649, 9650 ¶ 3 (2003); Reply to Opposition to *In re Mediacom Southeast LLC Petition for Determination of Effective Competition in Santa Rosa County, Florida*, Exh. 4 at 1-3 (SkyTrends Zip Code+4 Effective Competition Tracking Report).

<sup>31</sup> Petition for Reconsideration at 14-15.

<sup>32</sup> See *supra*, note 24.

<sup>33</sup> Opposition at 8 n. 26. Mediacom asked SkyTrends to recalculate the number of DBS subscribers in Santa Rosa, to delete the 99 zip code+4 extension areas discussed above and five additional zip code+4 extension areas Santa Rosa said should be removed from the calculations. SkyTrends stated that after excluding those 104 contested zip code+4 extension areas (*i.e.* 5,948 zip code+4 extension areas in total), the number of Santa Rosa households subscribing to DBS was 11,225. *Id.*

<sup>34</sup> *Id.* The DBS penetration rate excluding the 104 zip code+4 extension areas at issue is 29.15 percent (11,225 DBS subscribers ÷ 38,512 Santa Rosa households = 29.15 percent). *Id.*

<sup>35</sup> Mediacom shows that the number of subscribers in Santa Rosa, excluding the 104 extension areas discussed above, is 11,255. Opposition at 8 n. 26. In order to show that Santa Rosa falls below the 15 percent threshold, Santa Rosa would have to show that the number of subscribers drops from 11,255 to 5,772 subscribers (14.99 percent of Santa Rosa's 38,512 households). Even using Santa Rosa's completely unsupported "assumptions," we multiply

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has failed to demonstrate that the second prong of the competing provider test for effective competition is not satisfied in Mediacom's Santa Rosa franchise area.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that the petition for reconsideration filed in the captioned proceeding by the County of Santa Rosa, Florida **IS DENIED**.

11. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.<sup>36</sup>

#### FEDERAL COMMUNICATIONS COMMISSION

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that 11,225 subscriber figure by .99 (Santa Rosa's estimate to account for human error) and .85 (Santa Rosa's estimate to exclude double counting of individual subscribers), which equals 11,031 subscribers. Further, even though it is highly unlikely that every seasonal home in Santa Rosa subscribes to DBS, we, for the sake of argument, remove all 759 Santa Rosa identified seasonal condos from that number, which equals 10,272 subscribers. The Commission has determined that effective competition petitioners may include dual cable/DBS subscribers. *See In re Mediacom Minnesota LLC*, DA 05-546 at ¶ 13 (rel. March 7, 2005). However, even if we were persuaded to remove the arguably *de minimus* number of dual subscribers from consideration, Santa Rosa provided absolutely no evidence showing how many dual subscribers exist in Santa Rosa. Santa Rosa also argues that 184 zip code+4 extension areas should be removed from the calculation because those extension areas "mapped to locations on the western end of Santa Rosa Island, a beach community known for its seasonal vacation homes." Petition for Reconsideration at 14, Exh. 6 at ¶ 3 (Affid. of Robert F. Sepe, Principal of Action Audits). We note that Santa Rosa offers no evidence demonstrating that those 184 zip code+4 extension areas are, in fact, entirely seasonal. Even if the Santa Rosa did prove that those zip code+4 extension areas represent exclusively seasonal homes, each zip code extension area would have to contain 25 DBS subscribers for the penetration rate to fall below 15 percent, a highly unlikely and unsupported scenario (184 x 25 = 4600; 10,272-4600 = 5672 subscribers, a 14.7 percent penetration rate (5,672 Santa DBS subscribers ÷ 38,512 Santa Rosa households = 14.7 percent)).

<sup>36</sup>47 C.F.R. § 0.283.